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IN THE

Supreme Court of the United States

October Term, 1974

No. 74-588

THE SCHOOL TOWN OF SPEEDWAY, INDIANA, AND THE SCHOOL CITY OF BEECH GROVE, INDIANA,

Petitioners,

VS.

UNITED STATES OF AMERICA, DONNY BRURELL BUCKLEY, ET AL.,

Respondents.

REPLY BRIEF OF PETITIONERS THE SCHOOL TOWN OF SPEEDWAY AND THE SCHOOL CITY OF BEECH GROVE, INDIANA TO THE BRIEF OF THE UNITED STATES IN OPPOSITION

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This reply brief is filed by petitioners The School Town of Speedway and The School City of Beech Grove, Indiana, in reply to the "Brief for the United States in Opposition."

The United States has presented no logical or legal reason in support of the order for remand entered by the Seventh Circuit Court of Appeals. The fundamental infirmity in the Brief of the United States and such remand order, lies in the failure to recognize that under

Milliken there can be no causal relationship arising out of Uni-Gov which could possibly provide a foundation for an inter-district remedy. This is so because, although petitioners were alleged by intervening plaintiffs to have committed discriminatory acts, petitioners were affirmatively found by the trial court to have operated unitary systems for and within the separate City and Town which petitioners serve.

Nowhere in its Brief does the United States attempt to logically or legally specify how Uni-Gov could possibly, in any way, justify an inter-district remedy. The United States contents itself with stating that Indiana law at one time generally provided that school boundaries were coterminous with civil city boundaries and that Uni-Gov did not expand the school boundaries of the Indianapolis Public Schools (IPS) to the four corners of Marion County at the same time the civil boundaries of the City of Indianapolis were so extended. Since Uni-Gov did nothing to cause segregation in any district or to change the boundaries of the eleven independent school corporations which had existed in Marion County for more than half a century, petitioners find it impossible to understand how an inter-district remedy could be predicated upon this feature of Uni-Gov. Segregation was found only in IPS, and "without an inter-district violation and inter-district effect, there is no Constitutional wrong calling for an inter-district remedy." *Milliken v. Bradley*, 41 L.Ed. 2d 1069 at 1091 (1974).

Moreover, any attempt to understand the position of the United States and the remand order is rendered even more difficult when it is applied to these petitioners. Petitioners The School Town of Speedway and The School City of Beech Grove have boundaries which are respectively coterminous with the Civil Town of Speedway and

the Civil City of Beech Grove, Indiana. If, as the United States maintains, Uni-Gov should have created one school corporation enveloping all of Marion County, then the Civil Town of Speedway and the Civil City of Beech Grove would not have school districts coterminous with their boundaries. These petitioners would then have "suffered" the same effect which the United States complains of in respect to Uni-Gov.

The contentions of the United States may be reduced simply to this: The Indiana Legislature should have enacted legislation which would have effectively eliminated all eleven separate, independent school districts situated in Marion County, including the school districts serving the Town of Speedway and the City of Beech Grove, and combined all of these school districts into one mammoth district. The sole rationale for this contention must ultimately rest, not upon inter-district discrimination as defined in *Milliken,* but rather upon the trial court's conjectural finding that a stable racial mix acceptable to the trial court could not be effected in IPS alone. (Jt. App. pp. A-202-204). Such a rationale has specifically been rejected by this Court:

> "If we were to read the holding of the District Court to require, as a matter of substantive Constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse. The Constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole." *Swann v. Charlotte-Mecklenburg Bd. of Ed.,* 402 U.S. 1 at 15 (1971).

Nor is this case premature, as the United States also argues. The factual history of these petitioners and all other parties is already in the record made in this action.

The statutory history of Indiana schools can be fully explored by briefs on the merits. The finding of the trial court that petitioners did not discriminate has not been contested on appeal and is the law of this case. There is thus nothing more to consider on remand which could alter the result which ultimately must be reached or which could provide a foundation for an inter-district remedy.

But even if all that has been said by petitioners is assumed *arguendo* to be lacking in merit, there still exists an important reason for the grant of certiorari in this case. Like the Brief of the United States, the opinion of the Seventh Circuit Court of Appeals below is devoid of any reasoning specifying the rationale of the remand, despite the fact that the Uni-Gov issue was fully litigated in the trial court. The Uni-Gov—*Milliken* inter-relationship, if any exists, is left undefined by the Court of Appeals. Upon remand the trial court would be provided only with the directive of the Seventh Circuit to "determine whether the establishment of the Uni-Gov boundaries without a like establishment of IPS boundaries warrants an inter-district remedy within Uni-Gov in accordance with *Milliken*." (Jt. App. p. A-33). Thus, what was said by this Court in *United States v. General Motors Corp.*, 323 U.S. 373 (1944) is applicable here:

> "The cause was remanded for trial in accordance with the ruling of the Circuit Court of Appeals. We think we should review that ruling inasmuch as it is fundamental to the further conduct of the case." 323 U.S. at 377.

Even if the Court of Appeals did not err, at the very least certiorari should be granted so that guidance may be provided to the lower courts in the further conduct of this action.

Little comment is required in response to the arguments of the United States relating to the trial court's holding that petitioners were bound under the doctrine of *res judicata* to the segregatory findings made against IPS in a trial in which petitioners did not participate. First, the United States says:

> "But the district court's holding was only that *de jure* segregation within the boundaries of the Indianapolis Public School System was *res judicata.*" (Brief for the U.S. In Opposition, p. 11).

While this statement is correct, the inference is that such holding was insignificant. To the contrary, the finding of segregation against IPS has provided the fundamental predicate to all of the litigation involving these petitioners. Petitioners were brought into this action because of the desire of the trial court to formulate an inter-district remedy, and the finding of segregation made against IPS was the foundation stone of this entire action.

Next, the United States says that "The issue of *de jure* segregation in the Indianapolis system had been fully litigated. . . ." (*Id.* at p. 11). With this petitioners agree. However, that litigation was conducted only by IPS. Petitioners, on the other hand, were precluded from litigating this issue in violation of their fundamental rights to due process of the law.

Lastly, on this subject the United States says that "Petitioners have not disputed the resolution of that issue." (*Id.* at p. 12). If by this the United States means that no evidence was adduced at the trial in which petitioners participated relative to the finding of segregation made against IPS, the United States is correct. However, as has previously been discussed in detail in petitioners' original brief filed herein, the trial court

affirmatively and unequivocally precluded petitioners from introducing any evidence or taking any actions at trial which would have contested the segregatory findings made against IPS. Petitioners do in fact dispute the resolution of such issue but were denied the opportunity to do so.

Petitioners respectfully submit that the weakness of the position of the United States on the *res judicata* holding is apparent from the failure of the United States to cite a single authority in support of their position and the total absence of any discussion relative to the authorities cited by petitioners.

CONCLUSION

The Courts below have violated the Constitutional rights of these petitioners by binding them to a judgment made in an action in which petitioners were never parties and by precluding petitioners from litigating one of the fundamental issues in this case. The Court of Appeals has further erred in remanding this case for further proceedings in the face of affirmative findings that petitioners operated unitary school systems at all pertinent times — a finding which under *Milliken* forecloses an inter-district remedy. At the very least, the absence of specific guidelines for further proceedings on remand necessitates a grant of certiorari in this case so that this long pending litigation may be expeditiously terminated and petitioners allowed to concentrate on the business of providing educational facilities for the citizens of their communities.

Respectfully submitted,

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